



Senate

General Assembly

File No. 448

January Session, 2011

Substitute Senate Bill No. 1024

Senate, April 7, 2011

The Committee on Energy and Technology reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT MODERNIZING THE STATE'S TELECOMMUNICATIONS LAWS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-247f of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The department shall regulate the provision of
4 telecommunications services in the state in a manner designed to foster
5 competition and protect the public interest.

6 (b) Notwithstanding the provisions of section 16-19, the following
7 telecommunications services shall be deemed competitive services: (1)
8 A telecommunications service offered on or before July 1, 1994, by a
9 certified telecommunications provider and a wide area telephone
10 service, "800" service, centrex service or digital centrex service offered
11 by a telephone company, (2) a telecommunications service offered to
12 business customers by a telephone company, (3) a home office service

13 offered by a telephone company, and (4) a telecommunications service
14 provided by a telephone company to a residential customer who
15 subscribes to two or more telephone company services, including basic
16 local exchange service, any vertical feature or interstate toll provided
17 by a telephone company affiliate. Unless reclassified pursuant to this
18 section, any other service offered by a telephone company on or before
19 July 1, 1994, shall be deemed a noncompetitive service, provided such
20 initial classification shall not be a factual finding that such service is
21 noncompetitive. [Notwithstanding subdivision (3) of subsection (c) of
22 section 16-247b, prior to January 1, 2010, a telephone company shall
23 not obtain a waiver from the department of the pricing standard set
24 forth in subdivision (1) of subsection (c) of section 16-247b for any
25 service reclassified as competitive pursuant to subdivision (2), (3) or (4)
26 of this subsection.]

27 (c) On petition, or on its own motion, [or in conjunction with a tariff
28 investigation conducted pursuant to subsection (f) of this section,] after
29 notice and hearing, and within ninety days of receipt of a petition or its
30 motion, [or within the time period set forth in subsection (f) of this
31 section,] as applicable, the department may reclassify a
32 telecommunications service as competitive, emerging competitive or
33 noncompetitive, in accordance with the degree of competition which
34 exists for that service in the marketplace, provided (1) a competitive
35 service shall not be reclassified as an emerging competitive service,
36 and (2) the department may extend the period (A) before the end of the
37 ninety-day period and upon notifying all parties to the proceedings by
38 thirty days, or (B) in accordance with the provisions of subsection [(f)]
39 (g) of this section, as applicable.

40 (d) In determining whether to reclassify a telecommunications
41 service, the department shall consider:

42 (1) The number, size and geographic distribution of certified
43 telecommunications providers of the service, provided the department
44 shall not reclassify any service as competitive if such service is
45 available only from a telephone company or an affiliate of a telephone

46 company that is a certified telecommunications provider;

47 (2) The availability of functionally equivalent services in the
48 relevant geographic area at competitive rates, terms and conditions,
49 including, but not limited to, services offered by certified
50 telecommunications providers, providers of commercial mobile radio
51 services, as defined in 47 CFR 20.3, voice over Internet protocol
52 providers and other services provided by means of alternative
53 technologies;

54 (3) The existence of barriers to entry into, or exit from, the relevant
55 market;

56 (4) Other factors that may affect competition; and

57 (5) Other factors that may affect the public interest.

58 (e) On or after December 31, 2011, any certified telecommunications
59 provider or telephone company may elect, upon written notice to the
60 department, to be exempt from any requirement to file or maintain
61 with the department any tariff for competitive or emerging
62 competitive intrastate telecommunications service offered or provided
63 to residential or business retail end user customers, provided such
64 provider or company shall provide its customers with information
65 regarding rates, terms and conditions for such telecommunications
66 service in a customer service guide or other manner as determined by
67 such provider or company. Such provider or company shall annually
68 file with the department a copy of such customer service guide, or any
69 other document listing the rates, terms and conditions for such
70 telecommunications service.

71 [(e)] (f) Each certified telecommunications provider and each
72 telephone company, except any such provider or company exempt
73 from any requirement to file any tariff for competitive or emerging
74 competitive intrastate telecommunications service pursuant to
75 subsection (e) of this section, shall file with the department a new or
76 amended tariff for each competitive or emerging competitive intrastate

77 telecommunications service authorized pursuant to section 16-247c. A
78 tariff for a competitive service shall be effective on five days' written
79 notice to the department. A tariff for an emerging competitive service
80 shall be effective on twenty-one days' written notice to the department.
81 A tariff filing for a competitive or emerging competitive service shall
82 include (1) rates and charges which may consist of a maximum rate
83 and a minimum rate, (2) applicable terms and conditions, (3) a
84 statement of how the tariff will benefit the public interest, and (4) any
85 additional information required by the department. A telephone
86 company filing a tariff pursuant to this section shall include in said
87 tariff filing the information set forth in subdivisions (1) to (4), inclusive,
88 of this subsection, a complete explanation of how the company is
89 complying with the provisions of section 16-247b, as amended by this
90 act, and, in a tariff filing which declares a new service to be
91 competitive or emerging competitive, a statement addressing the
92 considerations set forth in subsection (d) of this section. If the
93 department approves a tariff which consists of a minimum rate and a
94 maximum rate, the certified telecommunications provider or telephone
95 company may amend its rates upon five days' written notice to the
96 department and any notice to customers which the department may
97 require, provided the amended rates are not greater than the approved
98 maximum rate and not less than the approved minimum rate. A
99 promotional offering for a previously approved competitive or
100 emerging competitive tariffed service or a service deemed competitive
101 pursuant to this section shall be effective on three business days'
102 written notice to the department.

103 [(f)] (g) On petition or its own motion, the department may
104 investigate a tariff or any portion of a tariff, which investigation may
105 include a hearing. The department may suspend a tariff or any portion
106 of a tariff during such investigation. The investigation may include,
107 but is not limited to, an inquiry to determine whether the tariff is
108 predatory, deceptive, anticompetitive or violates the pricing standard
109 set forth in subdivision (1) of subsection (c) of section 16-247b, as
110 amended by this act. Not later than seventy-five days after the effective
111 date of the tariff, unless the party filing the tariff, all statutory parties

112 to the proceeding and the department agree to a specific extension of
113 time, the department shall issue its decision, including whether to
114 approve, modify or deny the tariff. If the department determines that a
115 tariff filed as a new service is, in fact, a reclassification of an existing
116 service, the department shall review the tariff filing as a petition for
117 reclassification in accordance with the provisions of subsection (c) of
118 this section.

119 [(g) The provisions of this section shall not prohibit the department
120 from ordering different tariff filing procedures or effective dates for an
121 emerging competitive service, pursuant to a plan for an alternative
122 form of regulation of a telephone company approved by the
123 department in accordance with the provisions of section 16-247k.]

124 Sec. 2. (NEW) (*Effective July 1, 2011*) The date and time of filing of
125 each document with the Department of Public Utility Control shall be
126 the date and time by which the department first receives a complete
127 electronic or paper version of such document, provided such electronic
128 or paper version is filed in accordance with section 16-1-14 of the
129 regulations of Connecticut state agencies. If payment of a fee is
130 required to accompany such document, the department shall not deem
131 a document to be filed until the department receives the fee. If a
132 document is electronically submitted outside of the department's
133 normal business hours, the department shall deem the document to be
134 filed at the time the department's offices next open. The department
135 shall not require paper versions of electronic filings to be filed, except
136 (1) at the request of the department, one paper copy shall be sent to the
137 department via first class United States mail, (2) at the request of any
138 party or intervenor in a specific department docket who does not have
139 computer access, the department may request one paper copy be sent
140 to such party or intervenor via first class United States mail, and (3) at
141 the request of the Office of Consumer Counsel, one paper copy shall be
142 sent to the Office of Consumer Counsel via first class United States
143 mail. The department shall amend section 16-1-14 of the regulations of
144 Connecticut state agencies in accordance with chapter 54 of the general
145 statutes to comply with the provisions of this section.

146 Sec. 3. Section 16-32 of the general statutes is repealed and the
147 following is substituted in lieu thereof (*Effective October 1, 2011*):

148 Each public service company, except telegraph companies and
149 express companies subject to the jurisdiction of the Interstate
150 Commerce Commission or its successor agency, and telephone
151 companies, community antenna television companies and holders of a
152 certificate of cable franchise authority owned, directly or indirectly, by
153 a parent company, the accounts and operations of which are required
154 to be audited annually in accordance with federal law, shall have an
155 annual comprehensive audit and report made of its accounts and
156 operations by independent public accountants satisfactory to the
157 Department of Public Utility Control. A copy of such annual audit
158 report shall be filed with the department, together with the company's
159 annual report. In the absence of such an audit report, or if the
160 department, after notice and opportunity for a hearing, determines
161 that such audit report is insufficient or unsatisfactory, the department
162 shall cause such an audit to be made at the expense of the company
163 either by independent public accountants satisfactory to the
164 department or by any staff of the department engaged in the activities
165 contemplated by subsection (b) of section 16-8. Notwithstanding the
166 provisions of this section, the department may require a state-specific
167 audit from a telephone company, community antenna television
168 company or holder of a certificate of cable franchise authority
169 otherwise exempt from the audit required pursuant to this section
170 because its accounts and operations are required to be audited
171 annually in accordance with federal law. In such instances, the
172 department shall specify its reasons for requiring the state-specific
173 audit and why the requested additional audit will provide information
174 different than the audit filed with the annual report. The department
175 may waive the compliance with the provisions of this section by any
176 public service company whose annual gross income is less than one
177 hundred thousand dollars.

178 Sec. 4. Subsection (c) of section 16-247b of the general statutes is
179 repealed and the following is substituted in lieu thereof (*Effective July*

180 1, 2011):

181 [(c) (1) The rate that a telephone company charges for a competitive
182 or emerging competitive telecommunications service shall not be less
183 than the sum of (A) the rate charged to another telecommunications
184 company for a noncompetitive or emerging competitive local network
185 service function used by that company to provide a competing
186 telecommunications service, and (B) the applicable incremental costs of
187 the telephone company.]

188 [(2)] (c) (1) On and after the date the department certifies a
189 telephone company's operations support systems interface pursuant to
190 section 16-247n, the department shall, upon petition, conduct a
191 contested case proceeding to consider whether modification or
192 removal of the pricing standard [set forth in subdivision (1) of this
193 subsection for a telecommunications service deemed competitive
194 pursuant to section 16-247f] is appropriate. [Notwithstanding the
195 provisions of subdivision (1) of this subsection, if] If the department
196 determines that such a modification or removal is appropriate and is
197 consistent with the goals set forth in section 16-247a, the department
198 shall so modify or remove said pricing standard for such
199 telecommunications service.

200 [(3)] (2) Prior to the date that the department certifies a telephone
201 company's operations support systems interface pursuant to section
202 16-247n, the department may, upon petition, conduct a contested case
203 proceeding to consider whether modification or removal of the pricing
204 standard [set forth in subdivision (1) of this subsection for a
205 telecommunications service deemed competitive pursuant to section
206 16-247f] is appropriate. Any petition filed pursuant to this subdivision
207 shall specify the geographic area in which the applicant proposes to
208 modify or remove such pricing standard. [Notwithstanding the
209 provisions of subdivision (1) of this subsection, if] If the department
210 determines that such modification or removal is appropriate, is
211 consistent with the goals set forth in section 16-247a and facilities-
212 based competition exists in the relevant geographic area, the

213 department shall so modify or remove said pricing standard for such
214 telecommunications service. In determining whether facilities-based
215 competition exists in the relevant geographic area, the department
216 shall consider:

217 (A) The number, size and geographic distribution of other providers
218 of service;

219 (B) The availability of functionally equivalent services in the
220 relevant geographic area at competitive rates, terms and conditions;

221 (C) The financial viability of each company providing functionally
222 equivalent services in the relevant geographic market;

223 (D) The existence of barriers to entry into, or exit from, the relevant
224 geographic market;

225 (E) Other indicators of market power that the department deems
226 relevant, which may include, but not be limited to, market penetration
227 and the extent to which the applicant can sustain the price for the
228 service above the cost to the company of providing the service in the
229 relevant geographic area;

230 (F) The extent to which other telecommunications companies must
231 rely upon the noncompetitive services of the applicant to provide their
232 telecommunications services and carrier access rates charged by the
233 applicant;

234 (G) Other factors that may affect competition; and

235 (H) Other factors that may affect the public interest.

236 Sec. 5. Section 16-247m of the general statutes is repealed and the
237 following is substituted in lieu thereof (*Effective from passage*):

238 [(a)] On and after July 1, [2001] 2011, a telephone company may
239 [apply to the Department of Public Utility Control to] withdraw from
240 the retail provision of a telecommunications service, [provided such
241 telecommunications service has been deemed competitive pursuant to

242 section 16-247f prior to the date such application is submitted] upon
243 thirty days' notice to the Department of Public Utility Control,
244 provided such telecommunications service has been deemed a
245 competitive service pursuant to section 16-247f, as amended by this
246 act, prior to the date such notice is submitted. Any such [application]
247 notice shall specify (1) the service that the telephone company no
248 longer wishes to provide, and (2) the geographic area or areas in which
249 the telephone company proposes to no longer provide the service, [,
250 and (3) the number of customers of the telephone company that will be
251 affected by the proposed withdrawal and a discussion of ways to
252 mitigate such impact.]

253 [(b) In considering any application by a telephone company
254 pursuant to subsection (a) of this section, the department shall
255 consider (1) the impact the proposed withdrawal will have on the
256 goals set forth in section 16-247a, (2) the impact the proposed
257 withdrawal will have on the financial, managerial and technical ability
258 of the telephone company to provide other retail and wholesale
259 telecommunications services and the quality of such services, (3) the
260 impact the proposed withdrawal will have on the rates paid by retail
261 customers for the service that the telephone company no longer wishes
262 to provide at retail, (4) the impact the proposed withdrawal will have
263 on the retail availability of such service, and (5) the impact the
264 proposed withdrawal will have on the ability of certified
265 telecommunications providers to provide a functionally equivalent
266 service at retail. The department shall not approve any such
267 application for withdrawal unless it finds that such withdrawal (A) is
268 consistent with the goals set forth in section 16-247a, and (B) is not
269 contrary to the public interest. The department shall not approve any
270 such application or authorize the withdrawal of a telephone company
271 from the provision of a telecommunications service at retail unless the
272 service that the telephone company no longer wishes to provide has
273 been deemed competitive pursuant to section 16-247f. The department,
274 in approving any such application, shall develop a method to allow
275 customers receiving such service from the telephone company to
276 choose a new provider of such service, provided the department shall

277 not order the allocation or assignment of any customer.

278 (c) Any proceeding conducted pursuant to this section shall be
279 considered a contested case, as defined in section 4-166.

280 (d) The provisions of this section shall not (1) preclude the
281 withdrawal of a competitive or an emerging competitive tariff
282 pursuant to section 16-247f, (2) preclude a telephone company from
283 withdrawing a noncompetitive service in the normal course of
284 business, or (3) apply to any certified telecommunications provider or
285 any telephone company serving fewer than seventy-five thousand
286 customers.]

287 Sec. 6. Section 16-256k of the general statutes is repealed and the
288 following is substituted in lieu thereof (*Effective from passage*):

289 Each telephone company, as defined in section 16-1, and each
290 certified telecommunications provider, as defined in [said] section 16-
291 1, shall clearly and conspicuously disclose, in writing, to customers,
292 upon subscription and annually thereafter, (1) whether the removal or
293 change in any telecommunications service will result in the loss of a
294 discount or other change in the rate charged for any
295 telecommunications service subscribed to or used by the customer; and
296 (2) for any promotional offering filed on and after October 1, 2002,
297 with the Department of Public Utility Control pursuant to subsection
298 [(e)] (f) of section 16-247f, as amended by this act, that the offering is a
299 promotion and will be in effect for a limited period of time.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	16-247f
Sec. 2	<i>July 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	16-32
Sec. 4	<i>July 1, 2011</i>	16-247b(c)
Sec. 5	<i>from passage</i>	16-247m
Sec. 6	<i>from passage</i>	16-256k

Statement of Legislative Commissioners:

In section 2(3), "one paper copy to be sent" was changed to "one paper copy shall be sent" for conformity with drafting conventions and in section 3, "When requiring" was deleted and replaced with "Notwithstanding the provisions of this section, the department may require" and "In such instances," was added for clarity.

ET *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes to statutes regarding telecommunication law and does not result in any anticipated fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 1024****AN ACT MODERNIZING THE STATE'S TELECOMMUNICATIONS LAWS.****SUMMARY:**

This bill allows a telephone company to withdraw from providing a competitive telecommunications service by providing notice to, rather than getting approval from, the Department of Public Utility Control (DPUC). There are two telephone companies in the state, Verizon, which serves part of Greenwich, and AT&T, which serves the rest of the state. By law, telecommunications services are classified as competitive, emerging competitive, or noncompetitive.

The bill also:

1. eliminates a floor on certain telephone company charges;
2. starting December 31, 2011, allows telecommunications companies to exempt themselves from any requirement to file or maintain tariffs with DPUC for intrastate competitive or emerging competitive services offered or provided to retail customers;
3. reduces auditing requirements for certain telecommunications companies;
4. with several exceptions, exempts voice-over internet protocol (VOIP) service from state and local regulation; and
5. specifies when documents submitted to DPUC by telecommunications companies and other parties are considered to be filed and limits the number of paper copies that must be

filed.

EFFECTIVE DATE: Upon passage, except for the document filing and telephone company rate provisions, which are effective July 1, 2011 and the audit provisions, which are effective October 1, 2011

TELECOMMUNICATIONS PROVISIONS

Withdrawal from a Telecommunications Service

Under current law, a telephone company can apply to DPUC to withdraw from the retail provision of a telecommunications service that is considered competitive. The application must specify (1) the service that the company wishes to drop, (2) the area or areas where it proposes to no longer provide the service, and (3) the number of its customers that will be affected by the proposed withdrawal and a discussion of ways to mitigate the impact. Current law specifies the factors DPUC must consider in making its decision whether to approve the application. If DPUC approves the application, it must develop a method to allow customers receiving the service from the telephone company to choose a new provider of the service, although it may not order the allocation or assignment of any customer. DPUC must act on the application in a contested case. These provisions do not apply to a telephone company serving fewer than 75,000 customers.

The bill instead allows telephone companies to withdraw such services after providing 30 days notice to DPUC. The notice must describe the service and the area or areas where it proposes to no longer provide the service. The bill eliminates the requirement that DPUC develop a method to address existing customers of the service.

Floor on Telephone Company Charges

The bill repeals a provision that requires that the rate that a telephone company charges for a competitive or emerging competitive telecommunications service be no less than the sum of (1) the rate the telephone company charges another telecommunications company for a noncompetitive or emerging competitive local network service

function used by that company to provide a competing telecommunications service and (2) the telephone company's applicable incremental costs.

Tariffs

Under current law, certified telecommunications providers and telephone companies must file a new or amended tariff with DPUC for each new competitive or emerging competitive intrastate telecommunications service. The tariffs are effective within five and 21 days, respectively, after filing. DPUC can investigate the tariff and suspend the tariff during the investigation.

Starting December 31, 2011, the bill allows a provider or company to exempt itself from any requirement to file or maintain tariffs with DPUC for intrastate competitive or emerging competitive services offered or provided to residential or business retail customers. The provider or company must (1) notify DPUC of its action and (2) give its customers information on rates, terms, and conditions for the service in a customer service guide or other way as it determines. The provider or company must annually file a copy of the guide or other document listing the rates, terms, and conditions for the affected service with DPUC.

The bill eliminates DPUC's ability to order different tariff filing procedures or effective dates for an emerging competitive service under a DPUC-approved alternative regulation. It also eliminates DPUC's ability to reclassify a service in conjunction with its investigation of a tariff.

Audits

Under current law, all utility companies (other than those regulated by the Interstate Commerce Commission) must have an annual comprehensive audit and report made of their accounts and operations by independent public accountants satisfactory to DPUC. The bill additionally exempts telephone companies, cable TV companies, and holders of a certificate of cable franchise authority (another type of

cable TV company) that are owned, directly or indirectly, by a parent company whose accounts and operations must be audited annually under federal law. DPUC can still order a state-specific audit for these companies, but must specify (1) its reasons for requiring the state-specific audit and (2) why the additional audit will provide information different from the audit filed with the annual report.

Regulation of VOIP Services

Under the bill, a VOIP service is one that: (1) enables real-time, two-way voice communications that originate or terminate from the user's location using an Internet protocol or a successor protocol; (2) uses a broadband connection from the user's location; and (3) permits users to receive calls that originate on the public telephone network and to terminate calls on this network. VOIP service providers include companies such as Skype and Vonage.

The bill generally bars state agencies and political subdivisions from enacting, adopting, or enforcing any law or other provision having the force of law that regulates, or has the effect of regulating, the entry, rates, terms, or conditions of VOIP service.

This prohibition does not:

1. affect the attorney general's authority to enforce the Connecticut Unfair Trade Practices Act and other consumer protection laws of general applicability;
2. affect, mandate, or prohibit the assessment of nondiscriminatory enhanced 9-1-1 fees or telecommunications relay service fees; and
3. modify or affect DPUC's rights, obligations, or authority to act under or enforce the provisions of relevant federal law regarding any applicable tariff, or any state law related to wholesale rights and obligations, including the department's authority.

The last item includes DPUC's right to (1) enforce the rights, duties,

and obligations of local exchange carriers (e.g., telephone companies) to interconnect and exchange voice traffic, including VOIP traffic; (2) enforce the above rights or obligations or any tariff through arbitration proceedings or other available mechanisms and procedures; or (3) require the payment of switched network access rates or other intercarrier compensation rates, as applicable, and the associated rates, terms, and conditions.

DPUC FILINGS

Under the bill, each document submitted to DPUC is considered filed on the date and at the time when DPUC first receives a complete electronic or paper version of it, so long as it filed in accordance with relevant DPUC regulations. If a fee must accompany the document, DPUC may not consider a document filed until it receives the fee. If a document is electronically submitted outside of DPUC's normal business hours, DPUC must consider the document to be filed when its offices next open.

Under the bill, DPUC may not require the filing of paper versions of electronic filings, except it may require that (1) one paper copy be mailed to it; (2) at its request, one paper copy be mailed to a party or intervenor in a specific DPUC docket who does not have computer access; and (3) one paper copy be mailed to the Office of Consumer Counsel (OCC) at OCC's request. The bill requires DPUC to amend its regulations to reflect these changes.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 21 Nay 1 (03/22/2011)